

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**CIENA CORPORATION, a Delaware
corporation,
Plaintiff,**

v.

**NORTEL NETWORKS, INC., a Delaware
corporation, NORTEL NETWORKS
LIMITED, a Canadian corporation, and
NORTEL NETWORKS CORPORATION,
a Canadian corporation,**

Defendants.

Civil Action No. 2:05-CV-14-LED

Judge Davis

JOINT MOTION TO MODIFY AMENDED DOCKET CONTROL ORDER

Plaintiff Ciena Corporation (“Ciena”) and Defendants Nortel Networks, Inc., Nortel Networks Limited, and Nortel Networks Corporation (collectively, “Nortel”), hereby jointly move the Court to modify the Amended Docket Control Order as set forth in the table below. The new trial date and corresponding modifications to the Court’s Amended Docket Control order have been negotiated in good faith between the parties.

The parties jointly request a one-month continuance of the trial date, currently June 12, 2006, and associated discovery deadlines for the following reasons.

First, having received the Court’s claim construction order, the parties have agreed to resume mediation and are in the process of setting a mediation date with the Honorable Robert Parker for the coming weeks. Given the number of patents involved in this case and in the parties’ respective patent portfolios, the decision makers on both sides will need some time, free of the pressure of an upcoming trial setting, to negotiate the specifics of a settlement. The

current trial date of June 12, 2006 would require the parties to conduct mediation while simultaneously preparing for trial, which would place a significant burden on both parties.

Second, although the parties have diligently pursued discovery in this matter, the number of patents, witnesses, and associated scheduling issues have made it difficult to complete discovery by the current deadline. There are still several outstanding, and important, discovery requests and depositions that the parties have agreed to provide to each other, but which cannot be completed in time to meet the current deadlines for designation of deposition excerpts and trial exhibits.

Third, the current deadlines do not provide sufficient time for the parties to review expert reports and conduct expert-related discovery prior to trial. At present, the parties are scheduled to exchange opening expert reports on May 9, 2006 and rebuttal expert reports on May 23, 2006. Given the current trial schedule, the parties would have only two short weeks prior to the start of trial to conduct expert discovery – a nearly impossible task given the fact that both sides have a total of twelve experts expected to be called at trial. A continuance would allow the parties sufficient time to conduct such expert discovery.

Finally, lead counsel for Nortel, Sam Baxter, is set for trial in the coming weeks in *Alt v. Medtronic, Inc.*, Civil Action No. 6:06CV95 in this Court and is also set for trial beginning on May 30, 2006 in *Kozak v. Medtronic Inc.*, Civil Action No. H-03-4400 in the United States District Court for the Southern District of Texas. Mr. Baxter is lead counsel in both cases.

Consequently, the parties request that the following deadlines be modified:

Docket Control Entry	Current Deadline	Proposed Deadline
Ciena's Response to Nortel's Dispositive Motion on Breach of Contract	April 28, 2006	Two court days after the later of (i) the deposition of Art Fisher and (ii) Nortel's designated witness with

		respect to the two issues identified in G. Lippetz's 5/3/06 e-mail to M. Perez that are related to topic 23 of Ciena's November 23, 2006 30(b)(6) deposition notice
Nortel's Responses to Ciena's Dispositive Motions	May 3, 2006	May 5, 2006
Designate Experts; Expert Reports Due (with the exception of damages-related expert reports)	Within 14 days after service by the Court of its Claim Construction Ruling	May 9, 2006
Nortel's Reply Briefs to Nortel's Dispositive Motions Due	May 9, 2006	May 11, 2006
Damages-Related Expert Reports Due	Within 14 days after service by the Court of its Claim Construction Ruling	May 12, 2006 [subject to the parties' agreement to permit supplementation of their respective damages expert reports if additional evidence is discovered or to refine their royalty/ lost profits base]
Parties Permitted to Supplement April 10, 2006 Identification of Trial Witnesses, if necessary	May 1, 2006	May 15, 2006
Ciena's Reply Briefs to Ciena's Dispositive Motions Due	May 15, 2006	May 18, 2006
Fact Discovery Deadline for the Depositions Listed on Exhibit A to the Court's 4/12/06 Order, the deposition of Patrick Nettles, the deposition of Jean Clermont, and the deposition of Agere	April 28, 2006	May 19, 2006

Parties Permitted to Supplement April 14, 2006 Identification of Rebuttal Trial Witnesses, if necessary	May 5, 2006	May 19, 2006
Designate Rebuttal Experts (for all experts); Rebuttal Expert Reports Due (for all experts)	Within 28 days after service by the Court of its Claim Construction Ruling	May 23, 2006
Parties to Exchange Page/Line Designations, Trial Exhibit Lists, and Hard Copies of Trial Exhibits.	May 11, 2006	June 2, 2006
Joint Pretrial Order, Joint Proposed Jury Instructions with Citation to Authority, and Form of the Verdict for Jury Trials	May 12, 2006	June 5, 2006
Parties to Complete Expert Discovery	To be agreed upon consistent with the Court's January 19, 2006 Order modifying the exchange of expert reports	June 6, 2006
Deadline for Pretrial Objections	May 22, 2006	June 16, 2006
Parties to Exchange Cross-Designations to Page/Line Designations	May 23, 2006	June 16, 2006
<i>Daubert</i> Motions Due	To be agreed upon consistent with the Court's January 19, 2006 Order modifying the exchange of expert reports	June 16, 2006
Deadline for Objections to Cross-Designations to Page/Line Designations	May 29, 2006	June 23, 2006
Motions <i>in Limine</i> Due	May 22, 2006	June 23, 2006
Response to <i>Daubert</i> Motions	To be agreed upon consistent	June 26, 2006

Due.	with the Court's January 19, 2006 Order modifying the exchange of expert reports	
9:00 a.m. PRETRIAL CONFERENCE at the United States District Court, 211 W. Ferguson, 3 rd Floor, Courtroom of Judge Davis in Tyler, Texas 75702	May 25, 2006	June 29, 2006
9:00 a.m. JURY SELECTION at the United States District Court, 211 W. Ferguson, 3 rd Floor, Courtroom of Judge Davis in Tyler, Texas 75702	June 5, 2006	July 10, 2006
Exhibits & Exhibit Lists Due	June 12, 2006	July 17, 2006
9:00 a.m. JURY TRIAL at the United States District Court, 211 W. Ferguson, 3 rd Floor, Courtroom of Judge Davis in Tyler, Texas 75702	June 12, 2006	July 17, 2006

For the foregoing reasons, the parties request that the Court continue the trial date for this case to July 17, 2006 and modify its Amended Docket Control Order as set forth in the chart above. A proposed order is attached.

DATED: May3, 2006.

Respectfully submitted,

<p>McKOOL SMITH, P.C.</p> <hr/> <p>/s/ Sam Baxter</p> <p>Sam Baxter Attorney-in-Charge Texas State Bar No. 01938000 sbaxter@mckoolsmith.com McKOOL SMITH, P.C. P.O. Box O 505 E. Travis, Suite 105 Marshall, Texas 75670 Telephone: (903) 927-2111 Facsimile: (903) 927-2622</p> <p>Mike McKool, Jr. mmckool@mckoolsmith.com Texas State Bar No. 13732100 Theodore Stevenson, III tstevenson@mckoolsmith.com Texas State Bar No. 19196650 McKOOL SMITH, P.C. 300 Crescent Court, Suite 1500 Dallas, Texas 75201 Telephone: (214) 978-4000 Facsimile: (214) 978-4044</p> <p>Steven J. Pollinger spollinger@mckoolsmith.com Texas State Bar No. 24011919 Michael S. Perez mperez@mckoolsmith.com Texas State Bar No. 24002752 Peter J. Ayers payers@mckoolsmith.com Texas State Bar No. 24009882 McKOOL SMITH, P.C. 300 West 6th Street, Suite 1700 Austin, Texas 78701 Telephone (512) 692-8700 Facsimile: (512) 692-8744</p> <p>ATTORNEYS FOR DEFENDANTS NORTEL NETWORKS, INC., NORTEL NETWORKS LIMITED AND NORTEL NETWORKS CORPORATION</p>	<p>BINGHAM McCUTCHEN LLP</p> <hr/> <p>/s/ Gregory L. Lippetz</p> <p>Gregory L. Lippetz gregory.lippetz@bingham.com California State Bar No. 154228 BINGHAM McCUTCHEN LLP Three Embarcadero Center San Francisco, California 94111-4067 Telephone: (415) 393-2000 Facsimile: (415) 393-2286</p> <p>Fabio E. Marino fmarino@orrick.com California State Bar No. 183825 ORRICK HERRINGTON & SUTCLIFFE 1000 Marsh Road Menlo Park, California 94025 Telephone: (650) 614-7353 Facsimile: (650) 614-7401</p> <p>Calvin Capshaw ccapshaw@mailbmc.com Texas State Bar No. 03783900 BROWN McCARROLL LLP 1127 Judson Road, Suite 220 Longview, TX 75601-5157 Telephone: (903) 236-9800 Facsimile: (903) 236-8787 Attorney-in-Charge</p> <p>ATTORNEYS FOR CIENA CORPORATION</p>
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all known counsel of record via ECF on this the 3rd day of May, 2006:

/s/ Michael S. Perez

Michael S. Perez